UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,120	04/07/2004	Stephen J. Brown	/ 014030.0161PTUS	8225

60683 7590 03/29/2007

HEALTH HERO NETWORK, INC.
2000 SEAPORT BLVD.
SUITE 400
REDWOOD CITY, CA 94063

EXAMINER	
BRUSCA, JOHN S	
ART UNIT	**PAPER NUMBER**
1631	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/821,120	BROWN ET AL.	
	Examiner	Art Unit	
	John S. Brusca	1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 11-20* is/are rejected.

7)☒ Claim(s) *10* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/30/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings were received on 26 January 2007. These drawings are accepted.

Specification

2. The disclosure is objected to because of the following informalities: Upon entry of the drawing amendment filed 26 January 2007, the application contains a figure number 30 that is not indicated in the brief description of the drawings.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. The rejection of claim 1 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter in the Office action mailed 27 September 2006 is withdrawn in view of the amendment filed 26 January 2007.

4. The rejection of claim 1 under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well-established utility in the Office action mailed 27 September 2006 is withdrawn in view of the amendment filed 26 January 2007.

Claim Rejections - 35 U.S.C. § 112

5. The rejection of claim 1 under 35 U.S.C. 112, first paragraph in the Office action mailed 27 September 2006 is withdrawn in view of the amendment filed 26 January 2007.

Claim Rejections - 35 USC § 102

6. The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Schneider, US 4,465,044 in the Office action mailed 27 September 2006 is withdrawn in view of the amendment filed 26 January 2007.

7. The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Dunning, US 4,296,756 in the Office action mailed 27 September 2006 is withdrawn in view of the amendment filed 26 January 2007.

8. The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Iliff, US 6,270,456 in the Office action mailed 27 September 2006 is withdrawn in view of the amendment filed 26 January 2007.

9. The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Brown, US 6,161,095 in the Office action mailed 27 September 2006 is withdrawn in view of the amendment filed 26 January 2007.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 1, 2, 5-9, 11, 12, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. Patent No. 6,196,970, hereinafter referred to as Brown '970) in view of Barry et al. (U.S. Patent No. 6,188,988).

The claims are drawn to a method of using a medical knowledge database and a patient information database at a first server to generate queries at a second server, transmitting the queries to a patient device, and receiving and processing the responses from the patient device and updating the patient information database with the responses. In some embodiments the claims are drawn to an apparatus limited to performing the method. In some embodiments the data of at least 8 patients is displayed on a web page. In some embodiments risk levels are generated.

Brown '970 shows in the abstract and figure 1 an apparatus for performing a method of sending queries to a patient device, processing the responses and entering the new patient data to a database. Brown '970 states that an advantage to the method is that patients can be evaluated in real time in columns 3, line 65 to column 4 line 3. A plurality of servers used in the method are noted in column 6. Research information and patient information databases are described in columns 6 and 7. In column 6, lines 1-4, Brown '970 shows a medical research expert entering queries into a medical research device for eventual communication to the patient. In column 6, lines 12-14, Brown '970 shows transmission of medical research information and protocols to a patient device. Brown '970 shows in the abstract and column 4 that the method can be used to monitor research testing, and discusses research testing in the context of multiple patient clinical

trials in columns 1-2. Brown '970 does not show a medical information database that acts as a medical expert system to generate queries. Brown '970 does not show communication over the Internet or web pages of data of at least 8 patients, or display of risk levels.

Barry et al. shows an apparatus and methods of using knowledge databases and medical expert systems to provide advice for treatment to a patient in the abstract and throughout. Barry et al. shows in column 6, lines 40-61 that the medical expert system is useful for treatment of a wide variety of diseases. Barry et al. further shows updating patient information databases in column 8, lines 18-26, and use of multiple servers, engines, and patient interfaces in columns 9-15. Barry et al. shows in column 8, lines 64-65 and figure 3 that the servers may be linked by the Internet and shows graphical user interfaces in column 10, lines 1-35, and exemplifies computer interfaces in figure 4. Barry et al. shows in Table 4, in column 12, that the medical expert system can determine various categories of risk levels of the patients.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the apparatus and methods of Brown '970 by adding a medical expert system to perform the function of the medical experts of Brown '970 because Barry et al. shows that medical expert systems can effectively interact with patients to provide therapeutic care in real time. It would have been further obvious to use web pages to communicate results of the method because Brown '970 shows that different servers may be used to communicate the results and Barry et al. uses the Internet and user interface formats to communicate results of medical experts to patients and other users of the system. It would have been obvious to report the data of at least 8 patients because Brown '970 shows the method is useful to monitor and assess results of multi-patient clinical trials. It would have been further obvious to display risk

levels because Barry et al. shows that medical expert systems can determine risk levels for a number of different types of events.

13. Claims 1, 3, 4, 11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. Patent No. 6,196,970) in view of Barry et al. (U.S. Patent No. 6,188,988) as applied to claims 1, 2, 5-9, 11, 12, and 15-20 above, and further in view of Brown (U.S. Patent No. 6,161,095, hereinafter referred to as Brown '095).

The claims are drawn to determination and presentation of care gaps in treatment of patients.

Brown (U.S. Patent No. 6,196,970) in view of Barry et al. (U.S. Patent No. 6,188,988) as applied to claims 1, 2, 5-9, 11, 12, and 15-20 above does not show determination or presentation of care gaps in treatment of patients.

Brown '095 shows in column 1, lines 24-38 that lack of compliance with therapeutic regimens is a recognized problem in medical care. Brown '095 shows in the abstract a method and apparatus for determination of compliance by patients with a treatment regimen. Brown '095 shows in figure 1 that the system is on a computer network with interactions with patient devices and medical professionals. Brown '095 shows in columns 2-3 that the method provides reminders to patients to maintain a therapeutic regimen, and collects data regarding patient compliance. Brown '095 shows display of the compliance of a patient in column 6, lines 8-14.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the method and apparatus of Brown (U.S. Patent No. 6,196,970) in view of Barry et al. (U.S. Patent No. 6,188,988) as applied to claims 1, 2, 5-9, 11, 12, and 15-20 above by determination and presentation of care gaps in treatment of patients because Brown

'095 shows such determinations as part of a computer network patient care system, and that lack of compliance by patients is a recognized problem in medical care.

Allowable Subject Matter

14. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Brusca whose telephone number is 571 272-0714. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on 571-272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

J. S. Brusca 25 March 2007

John S. Brusca
Primary Examiner
Art Unit 1631

jsb